



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Herley Industries, Inc.

File: B-237960

Date: April 5, 1990

Gerald I. Klein, for the protester.

M. C. (Tony) Barnard, Vega Precision Laboratories, Inc., an interested party.

Charles J. McManus, Esq., and Geoffery D. Chun, Esq., Office of the General Counsel, Department of the Navy, for the agency.

Scott H. Riback, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Firm was reasonably eliminated from competitive range where, after round of discussions, firm's proposal continued to have significant deficiencies first identified during initial evaluation.

2. Discussions are meaningful where discussion questions should reasonably have led firm into deficient areas of its proposal.

DECISION

Herley Industries, Inc. (formerly Herley Microwave Systems, Inc.), protests its elimination from the competitive range under request for proposals (RFP) No. N00600-89-R-0931, issued by the Department of the Navy for transponder sets to be utilized as command control guidance systems in supersonic drones which are a "flying target" used to test missile accuracy. Herley argues that the Navy improperly evaluated its proposal and failed to engage in meaningful discussions with it.

We deny the protest.

The RFP called for the submission of firm fixed-price offers for base and option quantities of the transponder sets including first article testing. The RFP anticipated that

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award would be made to the lowest priced technically acceptable offeror. In preparing their offers, firms were required to submit proposals in four volumes which included an executive summary volume, a technical volume, a program planning and management volume, and a cost volume. Within the technical volume, each offeror was required to clearly and convincingly demonstrate that it had a thorough understanding of the design and engineering problems inherent in the effort called for in the RFP. Offerors also were to provide a thorough explanation of their technical approach to the design and fabrication of the transponder sets and also a detailed description of the testing procedures and methodology to be utilized by the firm including a description of testing facilities and equipment. Also in the technical volume, firms were required to provide an assessment of potential program risks and proposed management of risk. The RFP specifically warned that general statements that an offeror "understands, can or will meet the objectives of the program" would be inadequate and also that "paraphrasing the specifications shall be considered inadequate."

With regard to program planning and management, each firm was required to provide a description of its reliability and quality control methods and procedures. Offerors were required to demonstrate that they employed qualified personnel in the various disciplines required for successful contract completion and were to provide resumes which showed that the firm's various key project personnel were qualified in terms of education and technical experience. Offerors were specifically required to have at least two engineers who had college degrees and who had at least 5 years experience with transponders of the type solicited in order to qualify under the RFP's terms. Further, offerors were to indicate the percentage of time each identified person would be dedicated to the program.

In response to the RFP, the Navy received two proposals and, after evaluation of these proposals, determined that both were within the competitive range. In its evaluation of Herley's proposal, the Navy's evaluators identified a total of 23 deficiencies comprised of 12 specific technical deficiencies and 11 general concerns. The evaluators therefore rated Herley's proposal overall as "unacceptable but susceptible to being made acceptable." Following the initial evaluation of proposals, the Navy engaged in written discussions with both firms. After receipt of the protester's responses to the discussion questions, the Navy reevaluated Herley's proposal. As a result of this reevaluation, the Navy evaluators concluded that Herley had adequately addressed 19 of the 23 initially identified

deficiencies but had failed to resolve their concerns with respect to the remaining 4 deficiencies. Specifically, the evaluators found that Herley had failed to adequately describe its testing procedures and methodology or to specifically identify the test equipment to be utilized, failed to provide sufficient resumes to establish that the firm retained sufficient qualified personnel for the engineering requirement, had not adequately documented its cost proposal, and had failed to provide a required diagram which would show that the firm understood completely the nature of the requirement. On the basis of these conclusions, the evaluators reclassified Herley's proposal as "unacceptable and not susceptible to being made acceptable." The contracting officer, based upon the findings of the evaluators, concluded that Herley's proposal was outside the of the competitive range and notified Herley of this decision. Herley protested to our Office.

Herley argues first that the agency erred in eliminating it from the competitive range and that this action effectively results in continuation of a sole-source for this type of transponder system. Herley specifically argues that its proposal and revisions which responded to the discussion questions were adequate and should have satisfied the agency's concerns.

While we will closely scrutinize an agency decision which results in a competitive range of one, we will not disturb the decision absent a clear showing that it was unreasonable or a violation of applicable procurement statutes and regulations. See Institute for Int'l Research, B-232103.2, Mar. 15, 1989, 89-1 CPD ¶ 273.

With respect to the testing description deficiency identified by the Navy, Herley argues that its proposal was sufficient to demonstrate its understanding of the RFP's testing requirements. Herley points out that in its proposal and in the revisions it stated its compliance with the RFP's statement of work (SOW). In addition, Herley states that it provided adequate information in its proposal to demonstrate both its testing "philosophy" as well as the handling of testing within its organizational structure.

Initially, we note that the RFP clearly advised firms that offerors were required to establish their understanding of the work and specifically warned against general statements or compliance and paraphrasing of requirements. The RFP required that the offeror conduct a number of tests to determine if all items, including the critical decoder-encoder circuit card assemblies, complied with quality

assurance provisions. The tests included ones for reliability, seal verification, and equipment vibration. In its initial proposal, the protester basically indicated its compliance with the requirement. For example, for the "all-equipment vibration test," Herley restated the requirement for a 10 minute vibration test "per figure 5 of the specification." Similarly, regarding the explosive atmosphere design testing, Herley did not indicate the testing methodology to be used to show its component would meet the specification requirements. Its initial proposal did not address testing of the decoder-encoder assemblies. In short, in addition to the above-noted omissions, the proposal simply lacked any detail of how the required tests would be performed or any method of test verification. In response to the agency's statement in discussions that Herley needed to explain its testing so the government had "a good idea" that Herley understood the requirements and that Herley had given no indication that the decoder-encoder circuitry was to be tested, Herley did not provide any more detailed discussion of its testing procedures. Instead it referred back to its initial proposal. Herley also stated in its revised proposal that it had inadvertently omitted the statements regarding testing the decoder-encoder assemblies and provided them. However, Herley merely agreed to perform the needed testing without providing any details as to procedure or methodology. Essentially, Herley "parroted back" the test requirements, notwithstanding clear RFP language that this would not be considered sufficient. Under these circumstances, the agency could reasonably conclude that Herley submissions failed to provide sufficient detail to show an adequate understanding of the requirements.

Regarding the provision of resumes for its key personnel, Herley alleges that, in its initial proposal, it provided the resumes of six individuals who would be serving in key positions on the project, at least two of whom met the RFP's specified requirements in terms of education and experience. In addition, Herley states that its response to the Navy's discussion question in this area provided still further information regarding which of the identified key personnel would be serving as the project's engineers and also provided the names of various Herley engineers whom the firm believed would likely serve as part of its project team. Finally, Herley argues that in addition to the two individuals specified by it as its project engineers, one of the other key employees identified by Herley also meets the RFP's requirements in terms of education and experience and, consequently, that individual should have been counted by the Navy as meeting the RFP's two-engineer requirement.

Regarding the manpower requirements, the solicitation called for, at a minimum, two engineers with college degrees and a minimum of 5 years experience with transponders of a specified type. All key personnel were to be identified with resumes and the percentage of time each person would be dedicated to this program was to be indicated. The Herley proposal contained six resumes. However, five of the engineers lacked the required education and/or experience and also, in some cases, were listed as performing other key functions such as program manager. The agency concluded that its manpower was short and stated this as a concern in discussions, specifically asking: "Why only one engineer?" The protester's response included the name of additional personnel with engineering experience, but failed to include resumes for these individuals, and the agency concluded that it still had insufficient information to evaluate the capabilities of the specified personnel.

The agency's evaluation was further hampered by Herley's failure to identify the percentage of time that each engineer and other key personnel would be dedicated to the program as required by the RFP. Apparently this was intentional and consistent with Herley's company policy, while stating that the proposal reflected its current staffing intentions, the proposal also advised that assignment of personnel would be contingent on the time of the award and company work load and failed to assign committed personnel for specific percentages of time. Herley further states in its protest that, it is a small company in which its staff "often wear several hats." Based on the proposal and discussion response, we think the agency could reasonably find Herley's manpower unacceptable because of its failure to meet the minimum engineering staff requirements and to persuasively establish it had the necessary qualified manpower available to staff all tasks properly to perform this contract.

Next, as to the absence of the decoding-encoding timing diagram which was requested by the Navy during discussions, Herley states that, although it did not submit this particular diagram, it did furnish the Navy with narrative and sketches relating to this aspect of the transponder sets. According to Herley, those materials were far more detailed than what the Navy requested during discussions and demonstrated unequivocally that Herley fully understood the nature of the requirement. The Navy acknowledges the protester did furnish a variety of information and drawings which related to various subassemblies of the decoder-encoder element of the transponder; however, the Navy did not find the information technically sufficient. It asserts that Herley's omission of an overall schematic which would

show that the firm clearly understood this aspect of the requirement was material and that this deficiency in the Herley proposal persisted even after a specific request for the diagram during discussions.

In its discussion question, the Navy specifically requested a decoding-encoding timing diagram. This request was consistent with the RFP requirement for a complete and technically detailed description of the proposed design which included the encoding and decoding of signals. While Herley argues that its narrative and subassembly drawings were sufficient to meet the Navy's requirements, we cannot find unreasonable the agency's position that Herley's unexplained failure to provide a "simple" overall schematic of the decoder-encoder design, a critical part of the solicited transponder was a material omission and raised questions concerning its level of understanding.

Given that Herley's revisions in response to the discussion questions did not resolve the agency's concerns as to Herley's ability to meet testing, manpower, and design requirements and its understanding of these requirements, we think the agency reasonably excluded Herley's offer from further consideration. McManus Sec. Sys., 67 Comp. Gen. 535 (1988), 88-2 CPD ¶ 68.

Herley also argues that the Navy failed to conduct meaningful discussions with the firm. Specifically, Herley argues that the Navy should engage in another more "explicit" round of discussions with it regarding the four areas outlined above in which its proposal was found technically deficient. The Navy responds that it engaged in adequate discussions with Herley.

One of the basic functions of discussions is to disclose deficiencies. In evaluating whether there has been sufficient disclosure of deficiencies, the focus is not on whether the agency described deficiencies in such detail that there could be no doubt as to their identification and nature, but whether the agency imparted enough information to the offeror to afford it a fair and reasonable opportunity in the context of the procurement to identify and correct deficiencies in its proposal. See Eagan, McAllister Assocs., Inc., B-231983, Oct. 28, 1988, 88-2 CPD ¶ 405. The degree of specificity necessary in disclosing deficiencies to meet the requirement for meaningful discussions is not a constant, but, rather, varies according to the degree of specificity of the solicitation. Id.

In our view, the present record supports a finding that the Navy held meaningful discussions with Herley concerning its

areas of deficiencies. For example, with respect to the test area, a reading of the SOW shows that the Navy provided substantial detail in stating its requirement. Consequently, the Navy's instruction to Herley to explain their testing description so that the government had "a good idea" that Herley understood the requirements was sufficient to lead the firm into that area of its proposal, especially in light of the RFP's admonition against statements of blanket compliance. Similarly, the educational and experience requirements for engineers contained in the RFP were quite specific and the Navy's question to Herley "manpower seems too short why only one engineer" should clearly have put the firm on notice that the Navy viewed at least one of its engineers as not qualified under the RFP requirements. In the area of the missing diagram, the Navy's discussion question--"please provide encoding-decoding timing diagram"--could not have been more specific. Indeed, under the circumstances, we fail to understand how Herley could have been given a clearer question in this regard and the protester has not indicated to us why this question is vague. Under the circumstances, therefore, we conclude Herley was clearly placed on notice of the deficiencies for which it was rejected.

The protest is denied.



 James F. Hinchman
General Counsel